

**ENTERED**

November 07, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOSE F. GARZA,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 2:16-CV-225
	§	&
MCCONNELL UNIT et al	§	CIVIL ACTION NO. 2:16-CV-414
	§	
Defendants.	§	

**ORDER OF CONSOLIDATION AND WITHDRAWING  
MEMORANDUM AND RECOMMENDATION**

Plaintiff filed this prisoner civil rights complaint pursuant to 42 U.S.C. § 1983 on June 13, 2016. (Case No. 2:16-cv-225, D.E. 1). Plaintiff failed to pay the filing fee or to request to proceed *in forma pauperis* (“IFP”) and was notified his pleadings were therefore deficient. (Case No. 2:16-cv-225, D.E. 2 and D.E. 4). Plaintiff failed to correct this deficiency and on August 18, 2016, the undersigned entered a Memorandum and Recommendation (“M&R”) recommending this case be dismissed for failure to prosecute.<sup>1</sup> (Case No. 2:16-cv-225, D.E. 5). Petitioner has not filed any objections to this M & R. However, on September 28, 2016, Plaintiff filed a second action with a similar prisoner civil rights complaint as well as an IFP application which was assigned Case No. 2:16-cv-414. In a letter received by the Court on October 24, 2016, Plaintiff indicates he would like the undersigned stop interfering with his case. (Case No. 2:16-

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<sup>1</sup> Plaintiff has since filed an inmate trust account statement (D.E. 7), however, he has not filed an application to proceed *in forma pauperis* in Cause No. 2:16-cv-225.

cv-414, D.E. 8). Therefore, it appears Plaintiff filed a new action in an attempt to have his case assigned to a different judge.<sup>2</sup>

Plaintiff is advised that Senior United States District Judge Hilda G. Tagle remains the presiding judge in his case. Judge Tagle will make the final trial court decision on dispositive motions and any memoranda and recommendations from a magistrate judge. Should Plaintiff's case proceed to trial, Judge Tagle will be the presiding judge at trial. However, Plaintiff's case has been referred to the undersigned magistrate judge for pretrial matters pursuant to Judge Tagle's standing order<sup>3</sup> and 28 U.S.C. § 636.

The M&R to dismiss for failure to prosecute in Plaintiff's case in Cause No. 2:16-cv-225 (D.E. 5) has not been adopted and remains pending for the District Judge's consideration. However, for the reasons stated herein, the M&R to dismiss for failure to prosecute (No. 2:16-cv-225, D.E. 5) is **WITHDRAWN**.

Plaintiff has filed Complaints raising the same or similar claims and, in his second case, a fully completed IFP application. Plaintiff has now complied with the applicable deficiency orders. Consolidation of his two cases is appropriate pursuant to Federal Rule of Civil Procedure 42(a) as the actions are pending before the same court, involving the identical or sufficiently similar parties and questions of law, and consolidation will conserve judicial resources and reduce time and cost of trying the cases separately.

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<sup>2</sup> Both of Plaintiff's cases are assigned to Senior United States District Judge Hilda G. Tagle. Case No. 2:16-cv-225 has been referred to the undersigned for case management, ruling on non-dispositive motions, and making recommendations on dispositive motions. Case No. 2:16-cv-414 has been referred to U.S. Magistrate Judge B. Janice Ellington. Judge Ellington agrees the cases should be consolidated.

<sup>3</sup> See Special Order No. 2015-1 on file with the District Clerk.


Accordingly, the Clerk of Court shall **CONSOLIDATE** Civil Action 2:16-cv-416 with 2:16-cv-225. The Clerk of Court is ordered to administratively close and terminate all motions as pending in Case No. 2:16-cv-416 and to file Plaintiff's Complaint<sup>4</sup>, IFP application and trust fund account statement in Case No. 2:16-cv-225. All future pleadings shall be filed in Case No. 2:16-cv-225.

The Clerk of Court is further directed to **WITHDRAW** the pending memorandum and recommendation in Cause No. 2:16-cv-225 (D.E. 5).

The Clerk of Court is further directed to send this Order and Judge Tagle's Special Order No. C-2015-1 to Plaintiff.

The undersigned will consider Plaintiff's IFP application and set a *Spears* hearing at a later date. Plaintiff shall not file letters with this Court and shall refrain from filing further pleadings until after a hearing has been conducted and/or Defendants have been served.

ORDERED this 4th day of November, 2016.

  
Jason B. Libby  
United States Magistrate Judge

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<sup>4</sup> The Complaints in both cases shall be filed in Cause No. 2:16-cv-225 to ensure all of Plaintiff's claims are before the Court.